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28 *Attorneys for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 EDUARDO GONZALEZ, et al., on behalf of
 13 themselves and all others similarly situated,
 14 Plaintiffs,

15 v.

16 ABERCROMBIE & FITCH STORES, INC., et al.,
 17 Defendants.

18 Case Nos. 03-2817 SI, 04-4730 and
 19 04-4731

20 **DECLARATION OF BILL LANN
 21 LEE IN SUPPORT OF
 22 PLAINTIFFS' MOTION TO
 23 EXTEND THE CONSENT DECREE**

24 Date: April 8, 2011
 25 Time: 9:00 a.m.
 26 Dept: Courtroom 10, 19th Floor
 27 Judge: Hon. Susan Illston

28 ELIZABETH WEST, et al., on behalf of
 19 themselves and all others similarly situated,
 20 Plaintiffs,

21 v.

22 ABERCROMBIE & FITCH STORES, INC., et al.,
 23 Defendants.

24 EQUAL EMPLOYMENT OPPORTUNITY
 25 COMMISSION,
 26 Plaintiffs,

27 v.

28 ABERCROMBIE & FITCH STORES, INC., et al.,
 29 Defendants.

29 **REDACTED COPY**

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 DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO EXTEND
 31 THE CONSENT DECREE - Case Nos. 03-2817 SI, 04-4730 and 04-4731

1 I, Bill Lann Lee, declare:

2 1. I am a shareholder with the law firm of Lewis, Feinberg, Lee, Renaker & Jackson, P.C.,
 3 and lead counsel for the Plaintiffs in the above-captioned action. This declaration is submitted in
 4 support of Plaintiffs' Motion to Extend the Consent Decree. I make this declaration based on my
 5 own personal knowledge and, if called as a witness, I could testify competently as to the matters set
 6 forth herein.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Court-
 8 Appointed Monitor's First Annual Compliance Report.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the Court-
 10 Appointed Monitor's Second Annual Compliance Report.

11 4. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt from the Court-
 12 Appointed Monitor's Third Annual Compliance Report.

13 5. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt from the Court-
 14 Appointed Monitor's Fourth Annual Compliance Report.

15 6. Attached hereto as Exhibit 5 are true and correct copies of excerpts from the Court-
 16 Appointed Monitor's Fifth Annual Compliance Report.

17 7. Attached hereto as Exhibit 6 is a true and correct copy of the Executive Summary of
 18 Court-Appointed Monitor's First Annual Compliance Report.

19 8. Attached hereto as Exhibit 7 is a true and correct copy of the Executive Summary of
 20 Court-Appointed Monitor's Second Annual Compliance Report.

21 9. Attached hereto as Exhibit 8 is a true and correct copy of the Executive Summary of
 22 Court-Appointed Monitor's Third Annual Compliance Report.

23 10. Attached hereto as Exhibit 9 is a true and correct copy of the Executive Summary of
 24 Court-Appointed Monitor's Fourth Annual Compliance Report.

25 11. Attached hereto as Exhibit 10 are true and correct copies of the Executive Summary of
 26 Court-Appointed Monitor's Fifth Annual Compliance Report.

27 12. On August 6, 2010, Plaintiffs filed a motion for leave to serve discovery regarding the
 28 selection of African Americans, African American female, and Latino applicants at Defendant's

1 stores. The discovery -- Requests for Admission, Interrogatories and Document Requests -- was
 2 focused on two subjects: (a) the adverse effect of Abercrombie's selection procedures, and (b) the
 3 validity and reliability of the selection procedures and consideration of alternative selection devices.
 4 On August 16, 2010, Abercrombie responded that it did not object to Plaintiffs serving this
 5 discovery and requested an extension of time to respond. Plaintiffs agreed.

6 13. On October 4, 2010, Abercrombie served written objections and answers. On October
 7 8, 2010, Abercrombie produced documents.

8 14. On October 28, 2010, Plaintiffs sent Abercrombie a Rule 37 letter (the "Rule 37 letter")
 9 regarding its responses. The Rule 37 letter stated that Abercrombie had failed to substantively
 10 answer much of Plaintiffs' discovery requests. For example, Plaintiffs' Requests for Admission
 11 included several requests seeking admissions regarding the applicant rates, hire rates and statistical
 12 significance of the differences all based on the Monitor's Reports. Abercrombie refused to answer
 13 this discovery or to otherwise explain its basis for denying that differences in its applicant rate and
 14 hire rate are statistically significant. Similarly, Abercrombie refused to provide responses to
 15 requests and interrogatories regarding the adverse effect of its selection procedures, the validity and
 16 reliability of the selection procedures and any consideration of alternatives.

17 15. On November 10, 2010, the parties participated in a meet and confer telephone
 18 conference, and, on November 16, 2010, Plaintiffs sent a letter summarizing the call and making
 19 proposals for resolving differences. Abercrombie indicated that it would provide a declaration from
 20 industrial psychologist Dr. Kathleen Lundquist, but otherwise did not respond to Plaintiffs'
 21 proposals for resolution of the discovery disputes.

22 16. On January 6, 2011, Abercrombie e-mailed the declarations of Dr. Lundquist and
 23 another expert, Bernard Siskin, and provided a flash drive with the underlying data the next day.
 24 Abercrombie's counsel stated that the declarations and flash drive resolved any discovery dispute
 25 between the parties.

26 17. The following day, January 7, 2011, Abercrombie filed a Motion for Resolution of
 27 Enforcement Proceedings. In support of its Motion, Abercrombie submitted the reports by the two
 28 experts served the day before, along with supporting documents.

1 18. The parties engaged in meet and confer sessions in order to set out a briefing schedule
 2 for the Motion for Resolution of Enforcement Proceedings, and sent proposed schedules to the
 3 Special Master. On February 10, the Special Master set a briefing schedule on the Motion, as well
 4 as deadlines for the parties to complete expert discovery. Pursuant to the schedule established by
 5 the Special Master, Plaintiffs have submitted the expert reports of Sheldon Zedeck and Louis
 6 Lanier. The Special Master will hold a hearing on the Motion on April 1, 2011. The Special
 7 Master expects to issue a substantive ruling on Defendant's Motion on April 11, 2011, three days
 8 prior to the end of the Consent Decree.

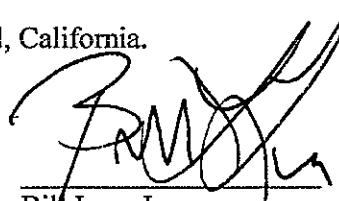
9 19. On February 18, 2011, the Monitor contacted the parties and requested their views on
 10 how the Monitor should conclude his duties. Specifically, the Monitor inquired as to whether he
 11 should prepare and issue the Sixth Annual Compliance Report covering the 11th and 12th
 12 Reporting Periods (i.e., May 2010 – April 2011). The Monitor noted that such a Report would
 13 necessarily be prepared and issued after the scheduled end of the Decree period. On February 24,
 14 2011, Plaintiffs stated that they had no objection to the preparation of the Sixth Annual Compliance
 15 Report, and that a final compliance meeting with the Monitor and Court hearing would be
 16 appropriate. On March 1, 2011, Abercrombie objected to Plaintiffs' suggestions and to any further
 17 work by the Monitor after April 14, 2011. Specifically, Abercrombie objected to the preparation of
 18 the Sixth Annual Compliance Report, and communicated that it did not intend to prepare and
 19 submit the 12th Semi-Annual Report to the Monitor. Plaintiffs were unaware of Abercrombie's
 20 intention not to fulfill any of its obligations under the Decree after April 14, 2011 until this March
 21 1, 2011 e-mail. Attached hereto as Exhibit 11 is a true and correct copy of the e-mail
 22 correspondence between the Monitor and the parties regarding the Sixth Annual Compliance
 23 Report.

24 20. Throughout the duration of the Consent Decree, Abercrombie has submitted Semi-
 25 Annual Progress Reports at the end of June and the end of December. Defendant's final Semi-
 26 Annual Progress Report would thus be expected around the end of June 2011, which is after the
 27 scheduled end of the Consent Decree on April 14, 2011.

1 21. Plaintiffs contacted Defendants on February 28, 2011 and requested that Defendant
2 stipulate to the extension of the Consent Decree until after any ruling by the Court on any appeals
3 of the Special Master's order on the Motion for Resolution. On March 1, 2011, Defendant declined
4 to stipulate to an extension. On March 15, 2011, Defendants declined Plaintiffs' request to
5 stipulate to an Order Shortening Time for the briefing and hearing schedule for this Motion to
6 Extend the Consent Decree

7
8 I declare, under penalty of perjury and the laws of the State of California, that the foregoing
9 is true and correct.

10 Executed this 15th day of March, 2011, at Oakland, California.



11 Bill Lann Lee
12 Attorney for Plaintiffs
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EXHIBIT 1

Filed Under Seal

EXHIBIT 2

Filed Under Seal

EXHIBIT 3

Filed Under Seal

EXHIBIT 4

Filed Under Seal

EXHIBIT 5

Filed Under Seal

EXHIBIT 6

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2 WILSON SONSINI GOODRICH & ROSATI
3 650 Page Mill Road
4 Palo Alto, CA 94304-1050
5 Telephone: (650) 493-9300
6 Facsimile: (650) 493-6811

7 Court-Appointed Monitor

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDUARDO GONZALEZ, ANTHONY) CASE NOS.: 03-2817 SI, 04-4730 and
OCAMPO, ENCARNACION GUTIERREZ,) 04-4731
JOHAN MONTOYA, JUANCARLOS GÓMEZ-)
MONTEJANO, JENNIFER LU, AUSTIN CHU,)
IVY NGUYEN, ANGELINE WU, ERIC FIGHT,)
CARLA GRUBB, DAVID CULPEPPER,)
PATRICE DOUGLASS, and ROBAIR)
SHERROD, BRANDY HAWK and ANDRE)
STEELE, on behalf of themselves and all others,)
Plaintiffs,)
v.)
ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)
Defendants.)
ELIZABETH WEST and JENNIFER LU,)
Plaintiffs,)
v.)
ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)
Defendants.)
EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
v.)
ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)
Defendants.)

EXECUTIVE SUMMARY OF COURT-
APPOINTED MONITOR'S FIRST ANNUAL
COMPLIANCE REPORT

1 **I. REQUIREMENTS OF CONSENT DECREE**

2 The Consent Decree provides for the preparation of an Executive Summary of the Court-
3 Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the
4 substance of the Monitor's findings" with respect to Abercrombie's¹ compliance with the
5 requirements of the Consent Decree for the applicable period. The Consent Decree goes on to
6 describe the Executive Summary as follows: "The parties contemplate that the Executive
7 Summary will reflect the Monitor's general findings in areas such as, but not limited to, training,
8 recruitment, creation of job analyses and descriptions, and attainment of Benchmarks, all as more
9 specifically covered by the Report, and the parties also contemplate that the Executive Summary
10 will not include specific findings as to, *inter alia*, the numbers of applications, hires, promotions,
11 or specific occurrences or events. By way of example, the Executive Summary's discussion of
12 the Company's training could generally set out the Monitor's findings relative to whether the
13 Company had or had not met its overall training objectives under the Decree over the subject
14 reporting period, and, if not, a general statement of matters with respect to which there had been
15 non-compliance and any steps the Company is to take to resolve such matters." What follows is
16 the Monitor's Executive Summary, with topics listed in the order presented in the Consent
17 Decree.

18 **II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

19 The Monitor found that Abercrombie's marketing materials, taken as a whole, had not yet
20 achieved the breadth of diversity required by the Consent Decree. The Consent Decree requires
21 that Abercrombie's marketing materials "reflect diversity, as reflected by the major racial/ethnic
22 minority populations of the United States." Generally, the Company's marketing materials
23 reflected some diversity with respect to African Americans, but did not reflect Latino or Asian

24
25 ¹ This Executive Summary incorporates herein by reference the definition of "Abercrombie"
26 contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie &
27 Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc; and Abercrombie & Fitch
28 Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors,
 agents, management, successors and assigns and those in active concert or participation with
 them, or any of them. The terms of [the Consent] Decree cover all stores operated by
 Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other
 concept operated by Abercrombie."

1 American models to the degree necessary to warrant a finding of generally reflecting diversity.
2 Indeed, of the approximately 100 employees interviewed by the Monitor, the most frequent
3 observation made by store personnel was that the images used in the Company's marketing
4 materials were not diverse.

5 To achieve full compliance with this obligation, Abercrombie should redouble its efforts
6 to include African American, Asian American, and Latino images in the full range of marketing
7 materials so that those materials, taken as a whole, reflect diversity.

8 **III. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CREATION OF
9 OFFICE OF DIVERSITY**

10 The Monitor found that Abercrombie met the Consent Decree's overall objectives with
11 regard to the creation of the Office of Diversity. Abercrombie selected a highly qualified and
12 skilled individual to serve as its Vice President of Diversity and to lead its Office of Diversity.
13 The Office of Diversity has at its disposal the resources necessary to discharge the Office of
14 Diversity's duties and make compliance with the Consent Decree's objectives possible.
15 Abercrombie has provided the Office of Diversity and its Vice President with sufficient access to
16 executive management and other departments within the Company.

17 **IV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING NOTICE AND
18 POSTING**

19 The Monitor found that Abercrombie met most of the Notice and Posting requirements as
20 set forth in the Consent Decree. The vast majority of Abercrombie stores have Exhibit B Notices
21 posted. A small percentage of Abercrombie stores do not have Exhibit B Notices posted or have
22 Exhibit B Notices posted in locations not readily visible. Abercrombie should ensure that all
23 Exhibit B Notices are posted in readily visible locations, as required by the Consent Decree.

24 The HR 411 Bulletin republished the Exhibit B Notice every four (4) months, as required
25 by the Consent Decree. The Associate Handbooks for each brand were revised to include a
26 statement that informs employees that Abercrombie entered into a Consent Decree, that the
27 Company agreed to undertake actions demonstrating its commitment to diversity and equal
28

1 employment opportunity, that each store posted an Exhibit B Notice, and that a summary of the
2 Consent Decree was available on a particular website, all as required by the Consent Decree.

3 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING EEO AND DIVERSITY
4 TRAINING**

5 The Monitor found that Abercrombie developed EEO and Diversity Training programs,
6 as required by the Consent Decree. However, Abercrombie did not provide the training to all
7 managerial, home office, or human resources employees within the required time period.
8 Abercrombie did not develop a system to adequately track whether and when all incumbent,
9 newly hired, or recently promoted managerial, home office, and human resources employees
10 received the training. Abercrombie has committed to the Monitor that it would develop systems
11 to track training for managerial, home office, and human resources employees. Going forward,
12 Abercrombie must provide confirmation that the Company provided EEO and Diversity Training
13 to all managerial, home office, and human resources employees within the time periods and in
14 the manner specified by the Consent Decree.

15 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL
16 COMPLAINT PROCEDURE**

17 The Monitor found that Abercrombie developed and implemented the Internal Complaint
18 Procedure, as required by the Consent Decree. The Monitor also found that the Internal
19 Complaint Procedure was adequately publicized through the Exhibit B Notices and the Associate
20 Handbooks. Although the Company developed a process to collect each incoming complaint,
21 the Company did not respond promptly to every complaint received, as required by the Consent
22 Decree. To remedy this problem, Abercrombie has refined its complaint collection process to
23 ensure that the process allows for prompt responses to each complaint. Additional attention to
24 prompt responses should be a priority in the upcoming compliance period. The Monitor also
25 found that Abercrombie adequately tracked complaints once an investigation was initiated.
26 Moreover, the Monitor found that investigations were conducted in a timely manner once
27 assigned for investigation. With respect to the Company's resolution of complaints received via
28 the Internal Complaint Procedure, the Monitor found that complaints were generally resolved to

1 the complainant's satisfaction. The Monitor found that Abercrombie instituted policies to
2 maintain records regarding the resolution of complaints received through the Internal Complaint
3 Procedure, as required by the Consent Decree.

4 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING PERFORMANCE
EVALUATIONS**

5
6 The Monitor found that Abercrombie adequately revised its Performance Evaluation
7 forms for store management employees, as required by the Consent Decree.

8 **VIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING JOB ANALYSIS AND
JOB CRITERIA**

9
10 The Monitor found that Abercrombie developed written job analyses and job-related
11 criteria for each in-store position, as required by the Consent Decree.

12 **IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND
HIRING**

13
14 The Monitor found that Abercrombie generally complied with the terms of the Consent
15 Decree with respect to the development of a Recruitment and Hiring Protocol to recruit and hire
16 for all hourly, in-store positions and the Manager-in-Training position. Abercrombie's
17 Recruitment and Hiring Protocol, however, does not contain an affirmative requirement that
18 Abercrombie seek qualified African American, Asian American, and Latino applicants of both
19 genders.

20 Abercrombie did not comply with the Consent Decree's requirement that all involved
21 staff be trained within sixty (60) days of the adoption of the Recruitment and Hiring Protocol.
22 While Abercrombie provided training in the Recruitment and Hiring Protocol to District
23 Managers and most Store Managers within the prescribed time period, Abercrombie has not yet
24 trained all Store Managers and has not yet provided training to any Assistant Managers or
25 Managers-in-Training. Abercrombie must promptly train all involved staff, including all Store
26 Managers, Assistant Managers, and Managers-in-Training, to be in compliance with the
27 requirements of the Consent Decree.

1 Abercrombie makes non-managerial job descriptions available so that potential
2 applicants are made aware of the differences among positions, as required by the Consent
3 Decree.

4 **X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL
5 PROMOTIONS**

6 Abercrombie promoted the targeted numbers of African American, Asian American,
7 Latino, and female managers to most managerial positions. However, Abercrombie did not
8 promote sufficient numbers of African American Assistant Managers to the Store
9 Manager/General Manager positions. To comply with the requirements of the Consent Decree,
10 Abercrombie must renew its efforts to promote African American managers "in a proportion that
11 is no less than the specific group's proportion of the available feeder pool."

12 **XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY
13 RECRUITERS**

14 The Monitor found that Abercrombie hired the agreed-upon number of Diversity
15 Recruiters, and that Abercrombie based an adequate number of those Diversity Recruiters in
16 major metropolitan areas, as required by the Consent Decree. Abercrombie was also charged
17 with using Best Efforts² to ensure that its Diversity Recruiters reflect diversity in race/national
18 origin and gender. More than half of the Company's Diversity Recruiters are female. Although
19 a significant percentage of the Diversity Recruiters are African American, the percentages of
20 Asian Americans and Latinos are too small to warrant a finding that the Diversity Recruiters
21 generally reflect diversity. Abercrombie should redouble its efforts to ensure that the Diversity
22 Recruiters hired reflect diversity in race and national origin.

23

24

25

26

27 ² This Executive Summary incorporates herein by reference the definition of "Best Efforts"
28 contained in the Consent Decree: "'Best Efforts' means implementing and adequately funding a
plan reasonably designed to comply with all the specific objectives to which the best efforts are
directed."

1 The Consent Decree also states that “Abercrombie will ... charge[] [its Diversity
2 Recruiters] with recruiting Minority^[3] applicants, including female applicants of each Minority,
3 who meet Minimal Eligibility Requirements into in-store positions.” The Recruiter job
4 description does not include the word “diversity” in its job title, nor does it specifically charge
5 the Diversity Recruiters with recruiting African American, Asian American, and Latino
6 candidates of both genders. While the Diversity Recruiters may be orally instructed to recruit
7 qualified Minority applicants, Abercrombie should take all steps necessary to ensure that the
8 Diversity Recruiters are charged pursuant to the terms of the Consent Decree.

9 Finally, the Consent Decree states that Abercrombie “will consider both external and
10 internal candidates” for the Diversity Recruiter position. Thus far, all of the Diversity Recruiters
11 hired have been internal candidates. Indeed, the Recruiter job description states that a candidate
12 must currently be at least a Store Manager at Abercrombie. For the upcoming compliance
13 period, Abercrombie should undertake an external recruiting effort when hiring any additional
14 Diversity Recruiters and/or filling any vacant Diversity Recruiter positions. Alternatively,
15 Abercrombie should seek modification of this provision from Lead Counsel and the EEOC if the
16 Company believes that objectives of this provision are being attained by alternative means.

17 **XII. SUBSTANCE OF MONITOR’S FINDINGS REGARDING ADVERTISEMENTS**

18 The Monitor found that Abercrombie did not sufficiently advertise for in-store
19 employment opportunities in periodicals or other media that targeted African Americans, Asian
20 Americans, and/or Latinos of both genders, as called for in the Consent Decree. Abercrombie
21 should increase its efforts to place advertisements for in-store employment opportunities in
22 periodicals or other media that target these Minority Groups, or seek modification of this
23 provision should Abercrombie be able to convince Lead Counsel and the EEOC that the
24 objectives of this provision are being attained by other efforts.

25
26
27 ³ This Executive Summary incorporates herein by reference the definition of “Minority”
28 contained in the Consent Decree: “‘Minority’ means all African Americans, Asian Americans,
and Latinos. ‘Minority Group’ means each of these three groups.”

1 **XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITING**
2 **EVENTS**

3 The Monitor found that Abercrombie generally satisfied the requirement that the
4 Company attend Minority job fairs and recruiting events that are attended by African American,
5 Asian American, and Latino individuals of both genders.

6 **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY**
7 **CONSULTANT**

8 The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity
9 and inclusion training for "all field-based managers and selected home office personnel."
10 Abercrombie did not utilize a Diversity Consultant to aid in identifying sources of qualified
11 African American, Asian American, and Latino candidates of both genders, as called for in the
12 Consent Decree. Abercrombie should utilize a Diversity Consultant to aid in identifying sources
13 of qualified Minority candidates, or seek modification of this provision should Abercrombie be
14 able to convince Lead Counsel and the EEOC that the objectives of this provision are being
15 attained by other efforts.

16 **XV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DOCUMENTATION**

17 The Monitor found that Abercrombie generally complied with the Consent Decree's
18 requirement that the Company provide documentation regarding its placement of advertisements
19 for in-store opportunities. However, Abercrombie did not provide information regarding the size
20 of the advertisements and, in some instances, the target audience of the publication in which the
21 advertisements were placed. To comply with the requirements of the Consent Decree,
22 Abercrombie should provide documentation regarding all advertisements for in-store
23 opportunities. Such documentation should include the publication in which the advertisement
24 was placed, the publication's target audience, and the size, time, and duration of the
25 advertisement.

26 The Monitor found that Abercrombie did not comply with the Consent Decree's
27 requirement that the Company provide documentation regarding the Diversity Recruiters'
28 attendance at job fairs and recruiting events targeted towards African Americans, Asian

1 Americans, and Latinos. Abercrombie should provide, at a minimum, documentation setting
2 forth descriptions of all job fairs or recruiting events attended, including the places, dates, and
3 target audiences.

4 **XVI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING
BENCHMARKS**

5
6 The Monitor found that Abercrombie complied with the requirements of the Consent
7 Decree in terms of implementing and establishing Hiring Benchmark rates for each six-month
8 compliance period.

9 The Company met all Company-wide Hiring Benchmarks set for the first six-month
10 period. However, in the second six-month period, Abercrombie did not meet most Company-
11 wide Hiring Benchmarks. With respect to the second six-month period's Hiring Benchmarks for
12 the Brand Representative position, Abercrombie met the Hiring Benchmark set for women.
13 Abercrombie did not meet the second-six month period's Brand Representative Hiring
14 Benchmarks set for Asian Americans, African Americans, Latinos, or African American women.
15 With respect to the second six-month period's Hiring Benchmarks for the Manager-in-Training
16 position, Abercrombie met the Hiring Benchmarks set for African Americans and women.
17 Abercrombie did not meet the second-six month period's Manager-in-Training Hiring
18 Benchmarks set for Asian Americans or Latinos. Abercrombie has developed a plan to achieve
19 all of its upcoming Benchmarks. The effectiveness of that plan will be assessed during the next
20 compliance period.

21 **XVII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING REPORTING,
RECORDKEEPING, AND COMPLIANCE MEETINGS**

22
23 The Monitor found that Abercrombie generally complied with the reporting,
24 recordkeeping, and compliance meeting requirements set forth in the Consent Decree. The
25 Company timely provided all reports required under the terms of the Consent Decree. The
26 Company also instituted policies regarding the preservation of documents as required by the
27 Consent Decree. The Company engaged in compliance meetings pursuant to the terms of the
28 Consent Decree.

1 **XVIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-**
2 **ANNUAL PROGRESS REPORTS**

3 Abercrombie submitted Semi-Annual Progress Reports in a timely fashion. The Monitor
4 found that the Semi-Annual Progress Reports included most of the materials and information
5 required pursuant to the Consent Decree. Going forward, the Company should address the
6 following areas in its Semi-Annual Progress Reports:

7 (1) An analysis of the hiring shortfalls in the Company's divisions of less than 80%
8 of the Company-wide rates;

9 (2) Confirmations from all of the District Managers that the Exhibit B Notices were
10 posted;

11 (3) Copies of all recruitment materials with an indication as to whether the image
12 depicts a former or current Abercrombie associate;

13 (4) An analysis of the Diversity VP's activities with respect to the Internal Complaint
14 Procedure;

15 (5) An analysis of the Diversity VP's activities with respect to Advertisements;

16 (6) An analysis of the Diversity VP's activities with respect to the use of a Diversity
17 Consultant;

18 (7) An analysis of the Diversity VP's activities with respect to providing EEO and
19 Diversity Training to all necessary associates;

20 (8) Documentation of the Diversity Recruiters' recruiting efforts;

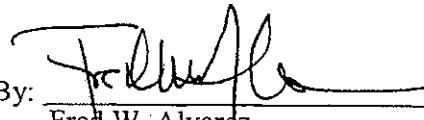
21 (9) Copies of all purchased advertising;

22 (10) Copies of all images used on the Company's websites; and

23 (11) Copies of any videos (e.g., A&F "New Faces" videos or operations videos).

24 Dated: August 25, 2006

Fred W. Alvarez

25
26 By: 
27 Fred W. Alvarez
28 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Court-Appointed Monitor

EXHIBIT 7

1 Fred W. Alvarez, State Bar No. 068115
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3 650 Page Mill Road
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Court-Appointed Monitor

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDUARDO GONZALEZ, ANTHONY
OCAMPO, ENCARNACION GUTIERREZ,
JOHAN MONTOYA, JUANCARLOS GÓMEZ-
MONTEJANO, JENNIFER LU, AUSTIN CHU,
IVY NGUYEN, ANGELINE WU, ERIC FIGHT,
CARLA GRUBB, DAVID CULPEPPER,
PATRICE DOUGLASS, and ROBAIR
SHERROD, BRANDY HAWK and ANDRE
STEELE, on behalf of themselves and all others.

CASE NOS.: 03-2817 SI, 04-4730 and
04-4731

EXECUTIVE SUMMARY OF COURT-APPOINTED MONITOR'S SECOND ANNUAL COMPLIANCE REPORT

12 Plaintiffs.

V.

14 ABERCROMBIE & FITCH STORES, INC.,
15 A&F CALIFORNIA, LLC, A&F OHIO, INC.,
16 and ABERCROMBIE & FITCH
MANAGEMENT CO.,

17 | Defendants.

ELIZABETH WEST and JENNIFER LU,

Plaintiffs,

V.

20 ABERCROMBIE & FITCH STORES, INC.,
21 A&F CALIFORNIA, LLC, A&F OHIO, INC.,
22 and ABERCROMBIE & FITCH
MANAGEMENT CO

23 Defendants

23 DECEDENTS.
24 EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

25

26 ABERCROMBIE & FITCH STORES, INC.,
A&F CALIFORNIA, LLC, A&F OHIO, INC.,
27 and ABERCROMBIE & FITCH
MANAGEMENT CO.,

Defendants.

EXECUTIVE SUMMARY OF COURT-APPOINTED MONITOR'S SECOND ANNUAL COMPLIANCE REPORT

1 **I. REQUIREMENTS OF CONSENT DECREE**

2 The Consent Decree provides for the preparation of an Executive Summary of the Court-
3 Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the
4 substance of the Monitor's findings" with respect to Abercrombie's¹ compliance with the
5 requirements of the Consent Decree for the applicable period. The Consent Decree goes on to
6 describe the Executive Summary as follows: "The parties contemplate that the Executive
7 Summary will reflect the Monitor's general findings in areas such as, but not limited to, training,
8 recruitment, . . . and attainment of Benchmarks, all as more specifically covered by the Report,
9 and the parties also contemplate that the Executive Summary will not include specific findings as
10 to, *inter alia*, the numbers of applications, hires, promotions, or specific occurrences or events.
11 By way of example, the Executive Summary's discussion of the Company's training could
12 generally set out the Monitor's findings relative to whether the Company had or had not met its
13 overall training objectives under the Decree over the subject reporting period, and, if not, a
14 general statement of matters with respect to which there had been non-compliance and any steps
15 the Company is to take to resolve such matters." What follows is the Monitor's Executive
16 Summary of the Second Annual Compliance Report, with topics listed in the order presented in
17 the Consent Decree. This Executive Summary does not discuss any of Abercrombie's
18 obligations limited to the first year following the Approval Date of the Decree.

19 **II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

20 The Consent Decree requires that Abercrombie's marketing materials "reflect diversity,
21 as reflected by the major racial/ethnic minority populations of the United States." The Monitor
22 found that Abercrombie's marketing materials during the Second Compliance Period,² taken as a

23
24 ¹ This Executive Summary incorporates herein by reference the definition of "Abercrombie"
25 contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie &
26 Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc.; and Abercrombie & Fitch
27 Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors,
28 agents, management, successors and assigns and those in active concert or participation with
 them, or any of them. The terms of [the Consent] Decree cover all stores operated by
 Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other
 concept operated by Abercrombie."

2 ² The Second Compliance Period extends from May 2006 to April 2007.

1 whole, did not reflect diversity. When the Monitor compared the apparent race/ethnicity of
2 individuals appearing in Abercrombie's marketing materials to the U.S. Census figures regarding
3 the major racial/ethnic minority populations of the United States, Abercrombie's marketing
4 materials were considerably less diverse. In particular, images of individuals whose apparent
5 race/ethnicity was Asian American or Latino were almost entirely absent from Abercrombie's
6 marketing materials.

7 To achieve compliance with this obligation, Abercrombie should strive to include African
8 American, Asian American, and Latino images in the full range of marketing materials so that
9 those materials, taken as a whole, reflect diversity.

10 **III. SUBSTANCE OF MONITOR'S FINDINGS REGARDING NOTICE AND
11 POSTING**

12 The Monitor found that Abercrombie generally achieved compliance with the Consent
13 Decree's requirements regarding the posting of Exhibit B Notices. In addition, Abercrombie
14 published the Exhibit B Notice every four (4) months in the HR 411 Bulletin, as required by the
15 Consent Decree.

16 **IV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING EEO AND DIVERSITY
17 TRAINING**

18 The majority of Abercrombie's Managers-in-Training, Assistant Managers, Store
19 Managers, and General Managers, as well as District Managers and Regional Managers, have
20 received EEO and Diversity Training. However, Abercrombie has not yet demonstrated whether
21 its District Managers, Regional Managers, and in-store managers were trained within the time
22 periods required by the Consent Decree. The great majority of Abercrombie's Home Office
23 Employees received EEO and Diversity Training within the time periods prescribed by the
24 Consent Decree. Abercrombie did not have any training obligations with respect to Human
25 Resources Associates in the Second Compliance Period. On a going-forward basis, Abercrombie
26 should ensure that it implements adequate systems to identify which employees are due for
27 training under the Consent Decree, and that those employees are timely trained.

1
2 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL
3 COMPLAINT PROCEDURE**

4 The Monitor found that, in general, Abercrombie complied with the Consent Decree's
5 requirements that it (1) commence and resolve investigations in a timely manner; (2) interview
6 relevant witnesses; (3) communicate the results of investigations to complainants; and (4) keep
7 written records of the investigatory steps taken. The Monitor also found that Abercrombie
8 continued to adequately publicize the Internal Complaint Procedure through the Exhibit B
9 Notices and the Associate Handbooks.

10 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND
11 HIRING**

12 In the First Annual Compliance Report, the Monitor reported that Abercrombie did not
13 comply with the Consent Decree's requirements that "all involved staff" receive training in the
14 Company's Recruitment and Hiring Protocol and that they do so within prescribed time periods.
15 Abercrombie also did not achieve compliance with these requirements during the Second
16 Compliance Period. Abercrombie must promptly train all involved staff, including all District
17 Managers, General Managers, Store Managers, Assistant Managers, and Managers-in-Training,
18 to be in compliance with the terms of the Consent Decree.

19 In the First Annual Compliance Report, the Monitor reported that Abercrombie's
20 Recruitment and Hiring Protocol did not contain an affirmative requirement that Abercrombie
21 seek qualified African American, Asian American, and Latino applicants of both genders, as
22 required by the Consent Decree. Abercrombie has since revised the Protocol to comply with this
23 portion of the Decree.

24 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL
25 PROMOTIONS**

26 Abercrombie promoted the targeted numbers of African American, Asian American,
27 Latino, and female managers to most managerial positions. However, Abercrombie did not
28 promote sufficient numbers of African American Assistant Managers to the Store

1 Manager/General Manager positions during the fourth six-month period. To comply with the
2 requirements of the Consent Decree, Abercrombie must renew its efforts to promote African
3 American managers “in a proportion that is no less than the specific group’s proportion of the
4 available feeder pool.”

5 **VIII. SUBSTANCE OF MONITOR’S FINDINGS REGARDING RECRUITERS**

6 The Monitor found that Abercrombie employed the agreed-upon number of Recruiters
7 and that Abercrombie based an adequate number of those Recruiters in major metropolitan areas,
8 as required by the Consent Decree. Abercrombie was also charged with using Best Efforts³ to
9 ensure that its Recruiters reflect diversity in race/national origin and gender. More than half of
10 the Company’s Recruiters are female, and a significant percentage are African American.
11 Abercrombie has also increased its percentage of Asian American Recruiters. However, the
12 percentage of Latino and Asian American Recruiters remains too low to warrant a finding that
13 the Recruiters generally reflect diversity with respect to race. The Monitor encourages
14 Abercrombie to continue its efforts to increase the overall diversity of its Recruiters.

15 The Consent Decree requires that Abercrombie consider both external and internal
16 candidates for the Recruiter position. Although the Recruiter job description no longer provides
17 that a candidate must currently be employed by Abercrombie in a management-level position,
18 the Company has not yet hired an external candidate. For the upcoming compliance period,
19 Abercrombie should expand its external recruiting efforts when seeking additional Recruiters
20 and/or filling vacant Recruiter positions. Alternatively, Abercrombie should seek modification
21 of this requirement from Lead Counsel and the EEOC if the Company believes that the
22 objectives of the Recruiter provision are being attained.

23 In compliance with the Consent Decree, Abercrombie revised the job description for the
24 Recruiter position to include an affirmative directive that the Recruiters recruit African
25 Americans, Asian Americans, and Latinos of both genders.

26
27 ³ This Executive Summary incorporates herein by reference the definition of “Best Efforts”
28 contained in the Consent Decree: “‘Best Efforts’ means implementing and adequately funding a
plan reasonably designed to comply with all the specific objectives to which the best efforts are
directed.”

1 **IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING ADVERTISEMENTS**

2 The Monitor found that Abercrombie generally complied with the Consent Decree's
3 requirement that the Company place advertisements for in-store employment opportunities in
4 periodicals that targeted African Americans, Asian Americans, and/or Latinos of both genders.
5 In the third six-month period, the majority of the advertisements did not advertise for in-store
6 employment, as required by the Consent Decree. However, in the fourth six-month period, all of
7 the advertisements expressly advertised for in-store opportunities.

8 **X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITING
9 EVENTS**

10 The Monitor found that Abercrombie satisfied the requirement that the Company attend
11 Minority⁴ job fairs and recruiting events that are attended by African American, Asian American,
12 and Latino individuals of both genders.

13 **XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY
14 CONSULTANT**

15 The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity
16 and inclusion training and to aid in identifying sources of qualified Minority candidates, as
17 required by the Consent Decree.

18 **XII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DOCUMENTATION**

19 The Monitor found that Abercrombie complied with the Consent Decree's requirement
20 that the Company provide documentation regarding the placement of advertisements for in-store
21 opportunities and the Recruiters' attendance at job fairs and recruiting events targeted towards
22 African Americans, Asian Americans, and Latinos.

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27 ⁴ This Executive Summary incorporates herein by reference the definition of "Minority"
28 contained in the Consent Decree: "'Minority' means all African Americans, Asian Americans,
and Latinos."

XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING BENCHMARKS

The Monitor found that Abercrombie complied with the requirements of the Consent Decree in terms of implementing and establishing Hiring Benchmark rates for the third and fourth six-month compliance periods.

However, Abercrombie did not meet most Company-wide Hiring Benchmarks set for the Second Compliance Period. Table 1, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Model position in the third and fourth six-month periods.

Table 1

	Third Period	Fourth Period
African American	Missed	Missed
Asian American	Missed	Missed
Latino	Missed	Missed
African American Female	Missed	Missed
Female	Met	Met

Table 2, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Manager-in-Training position in the third and fourth six-month periods.

Table 2
MIT - Achievement of Third and Fourth Period Benchmarks

	Third Period	Fourth Period
African American	Met	Missed
Asian American	Missed	Met
Latino	Missed	Missed
Female	Met	Met

XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING REPORTING AND COMPLIANCE MEETINGS

The Monitor found that Abercrombie complied with the reporting and compliance meeting requirements set forth in the Consent Decree. The Company timely provided all reports required under the terms of the Consent Decree and engaged in compliance meetings pursuant to the terms of the Consent Decree.

1 **XV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-**
2 **ANNUAL PROGRESS REPORTS**

3 Abercrombie submitted Semi-Annual Progress Reports in a timely fashion, which it
4 supplemented with additional materials. The Monitor found that the Semi-Annual Progress
5 Reports generally included the materials and information required pursuant to the Consent
6 Decree.

7
8 Dated: August 31, 2007

Fred W. Alvarez

9
10 By:

11 Fred W. Alvarez
12 WILSON SONSINI GOODRICH & ROSATI
13 Professional Corporation

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Court-Appointed Monitor

EXHIBIT 8

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6 Facsimile: (650) 493-6811

7 Court-Appointed Monitor

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 EDUARDO GONZALEZ, ANTHONY) CASE NOS.: 03-2817 SI, 04-4730 and
11 OCAMPO, ENCARNACION GUTIERREZ,) 04-4731
12 JOHAN MONTOYA, JUANCARLOS GÓMEZ-)
13 MONTEJANO, JENNIFER LU, AUSTIN CHU,)
14 IVY NGUYEN, ANGELINE WU, ERIC FIGHT,)
15 CARLA GRUBB, DAVID CULPEPPER,)
16 PATRICE DOUGLASS, and ROBAIR)
17 SHERROD, BRANDY HAWK and ANDRE)
18 STEELE, on behalf of themselves and all others,)
19 Plaintiffs,)
20 v.)
21 ABERCROMBIE & FITCH STORES, INC.,)
22 A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
23 and ABERCROMBIE & FITCH)
24 MANAGEMENT CO.,)
25 Defendants.)
26 ELIZABETH WEST and JENNIFER LU,)
27 Plaintiffs,)
28 v.)
29 ABERCROMBIE & FITCH STORES, INC.,)
30 A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
31 and ABERCROMBIE & FITCH)
32 MANAGEMENT CO.,)
33 Defendants.)

34) EXECUTIVE SUMMARY OF
35) COURT-APPOINTED MONITOR'S
36) THIRD ANNUAL COMPLIANCE
37) REPORT

38 EQUAL EMPLOYMENT OPPORTUNITY)
39 COMMISSION,)
40 v.)
41 ABERCROMBIE & FITCH STORES, INC.,)
42 A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
43 and ABERCROMBIE & FITCH)
44 MANAGEMENT CO.,)
45 Defendants.)

46 EXECUTIVE SUMMARY OF COURT-)
47 APPOINTED MONITOR'S THIRD ANNUAL)
48 COMPLIANCE REPORT

1 **I. REQUIREMENTS OF CONSENT DECREE**

2 The Consent Decree provides for the preparation of an Executive Summary of the Court-
3 Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the
4 substance of the Monitor's findings" with respect to Abercrombie's¹ compliance with the
5 requirements of the Consent Decree for the applicable period. The Consent Decree goes on to
6 describe the Executive Summary as follows: "The parties contemplate that the Executive
7 Summary will reflect the Monitor's general findings in areas such as, but not limited to, training,
8 recruitment, . . . and attainment of Benchmarks, all as more specifically covered by the Report,
9 and the parties also contemplate that the Executive Summary will not include specific findings as
10 to, *inter alia*, the numbers of applications, hires, promotions, or specific occurrences or events.
11 By way of example, the Executive Summary's discussion of the Company's training could
12 generally set out the Monitor's findings relative to whether the Company had or had not met its
13 overall training objectives under the Decree over the subject reporting period, and, if not, a
14 general statement of matters with respect to which there had been non-compliance and any steps
15 the Company is to take to resolve such matters." What follows is the Monitor's Executive
16 Summary of the Third Annual Compliance Report. This Executive Summary does not discuss
17 any of Abercrombie's obligations limited to the first year following the Approval Date of the
18 Decree.

19 **II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

20 The Consent Decree requires that Abercrombie's marketing materials, taken as a whole,
21 "reflect diversity, as reflected by the major racial/ethnic minority populations of the United
22 States." The Executive Summary discusses the diversity of Abercrombie's marketing materials
23 and the steps taken by the Company to ensure that its marketing materials reflect diversity.

24 ¹ This Executive Summary incorporates herein by reference the definition of "Abercrombie"
25 contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie &
26 Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc.; and Abercrombie & Fitch
27 Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors,
28 agents, management, successors and assigns and those in active concert or participation with
them, or any of them. The terms of [the Consent] Decree cover all stores operated by
Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other
concept operated by Abercrombie."

1 States." The Monitor found that Abercrombie's marketing materials during the Third
2 Compliance Period,² taken as a whole, did not reflect diversity.

3 Abercrombie has improved the representation of Asian Americans in its marketing. The
4 representation of African Americans and Asian Americans was at a level generally reflective of
5 their respective representation in the United States population, although diversity was not
6 uniform among the Abercrombie brands. Latinos remained generally underrepresented in
7 Abercrombie's marketing materials and across the brands. To achieve compliance with this
8 obligation, Abercrombie should continue to include African Americans and Asian Americans at
9 representative levels, and strive to include Latinos, in the full range of marketing materials,
10 including in the more prominent in-store locations, so that those materials, taken as a whole,
11 reflect diversity.

12 **III. SUBSTANCE OF MONITOR'S FINDINGS REGARDING NOTICE AND
13 POSTING**

14 The Monitor found that a majority of stores posted Exhibit B Notices. Abercrombie did
15 not, however, provide confirmation by District Managers that the Exhibit B Notices were posted,
16 as expressly required by the Consent Decree. Abercrombie should seek modification of this
17 requirement from Lead Counsel and the EEOC if the Company believes that the objectives of the
18 posting and confirmation requirements can be attained by other means.

19 The Consent Decree also requires that Abercrombie publish the Exhibit B Notice every
20 four months in its HR 411 Bulletin. Abercrombie's HR 411 Bulletins containing Exhibit B
21 Notices were not published every four months, with five months elapsing between the June 2007
22 and November 2007 publication dates, and six months elapsing between the November 2007 and
23 May 2008 publication dates.

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28 ² The Third Compliance Period extends from May 2007 to April 2008.

1 **IV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING EEO AND DIVERSITY**
2 **TRAINING**

3 The Monitor found that almost all managers, Salaried Exempt Employees, and Human
4 Resources Associates required to be trained under the Consent Decree received EEO and
5 Diversity Training in the Third Compliance Period. A majority of in-store managers and Human
6 Resources Associates were trained within the time periods required by the Consent Decree. A
7 minority of Salaried Exempt Employees were trained within the time periods prescribed by the
8 Consent Decree. Abercrombie did not provide sufficient data for the Monitor to make a
9 conclusion as to the proportion of Regional Managers and District Managers trained within the
10 applicable time periods. On a going-forward basis, Abercrombie should ensure that it
11 implements adequate systems to identify all employees who are due for training under the
12 Consent Decree, and that those employees are timely trained.

13 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL**
14 **COMPLAINT PROCEDURE**

15 The Monitor found that, in general, Abercrombie complied with the Consent Decree's
16 requirements that it (1) commence and resolve investigations in a timely manner; (2) interview
17 relevant witnesses; (3) communicate the results of investigations to complainants; and (4) keep
18 written records of the investigatory steps taken. Abercrombie continued to publicize the Internal
19 Complaint Procedure through the Exhibit B Notices and the Associate Handbooks.

20 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND**
21 **HIRING**

22 Abercrombie trained "all involved staff" in the Company's Recruitment and Hiring
23 Protocol during the Third Compliance Period. Abercrombie did not provide sufficient data to
24 make a definite conclusion as to the proportion of "involved staff" trained within the time
25 periods required by the Consent Decree. On a going-forward basis, Abercrombie should ensure
26 that it implements adequate systems to identify whether employees are timely trained.

1 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL**
2 **PROMOTIONS**

3 Abercrombie met the Promotion Benchmarks (as defined in the Consent Decree) with
4 respect to African American, Asian American, Latino, and female managers for most managerial
5 positions. However, Abercrombie did not do so with respect to African American promotions
6 from Assistant Manager to the Store Manager/General Manager positions during either the fifth
7 or sixth six-month period. To comply with the requirements of the Consent Decree,
8 Abercrombie must renew its efforts to promote African American managers "in a proportion that
9 is no less than the specific group's proportion of the available feeder pool."

10 **VIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITERS**

11 The Monitor found that Abercrombie employed the agreed-upon number of Recruiters
12 and that Abercrombie based an adequate number of those Recruiters in major metropolitan areas,
13 as required by the Consent Decree. Abercrombie is also charged with implementing a plan to
14 ensure that its Recruiters reflect diversity in race/national origin and gender. More than half of
15 the Company's Recruiters are female. The Monitor also found that the Recruiters are diverse
16 with respect to African Americans and Asian Americans. However, the percentage of Latino
17 Recruiters remains too low to warrant a finding that the Recruiters generally reflect diversity
18 with respect to race. Abercrombie should redouble its planning efforts to ensure that the
19 Recruiters hired reflect diversity with respect to Latinos.

20 The Consent Decree requires that Abercrombie consider both external and internal
21 candidates for the Recruiter position. The Company has not yet hired an external candidate. For
22 the upcoming compliance period, Abercrombie should expand its external recruiting efforts
23 when seeking additional Recruiters and/or filling vacant Recruiter positions. Alternatively,
24 Abercrombie should seek modification of this requirement from Lead Counsel and the EEOC if
25 the Company believes that the objectives of the Recruiter provision are being attained.

1 The Consent Decree requires that Abercrombie charge the Recruiters with recruiting
2 Minority³ applicants of both genders into in-store positions. While the job description for the
3 Recruiter position includes an affirmative directive that the Recruiters recruit African Americans,
4 Asian Americans, and Latinos of both genders, certain developments during the Third
5 Compliance Period suggested that Recruiters are not spending as much time performing this
6 essential role as in prior compliance periods. Abercrombie should ensure that the Recruiters
7 remain focused on recruiting Minority applicants of both genders into in-store positions.

8 **IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING ADVERTISEMENTS**

9 The Monitor found that Abercrombie complied with the Consent Decree's requirement
10 that the Company place advertisements for in-store employment opportunities in periodicals that
11 targeted African Americans, Asian Americans, and/or Latinos of both genders.

12 **X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MINORITY
13 RECRUITING EVENTS**

14 The Monitor found that Abercrombie attended Minority job fairs and recruiting events.
15 However, the Monitor noted that Minority job fairs and recruiting events represent only a small
16 fraction of the fairs and recruiting events that Recruiters attend overall, based on the information
17 provided in the Fifth and Sixth Semi-Annual Progress Reports.

18 **XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY
19 CONSULTANT**

20 The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity
21 and inclusion training and to aid in identifying sources of qualified Minority candidates, as
22 required by the Consent Decree.

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27 ³ This Executive Summary incorporates herein by reference the definition of "Minority"
28 contained in the Consent Decree: "Minority" means all African Americans, Asian Americans,
and Latinos."

XII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING BENCHMARKS

The Monitor found that Abercrombie complied with the requirements of the Consent Decree in terms of implementing and establishing Hiring Benchmark rates for the fifth and sixth six-month periods.

Abercrombie did not meet most Hiring Benchmarks set for the Model position for the Third Compliance Period. Table 1, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Model position in the fifth and sixth six-month periods.

Table 1

	Fifth Period	Sixth Period
African American	Missed	Missed
Asian American	Met	Missed
Latino	Missed	Met
African American Female	Missed	Missed
Female	Met	Met

Abercrombie met a majority of the Manager-in-Training Hiring Benchmarks set for the Third Compliance Period. Table 2, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Manager-in-Training position in the fifth and sixth six-month periods.

Table 2

	Fifth Period	Sixth Period
African American	Missed	Met
Asian American	Met	Missed
Latino	Missed	Met
Female	Met	Met

XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING COMPLIANCE MEETINGS

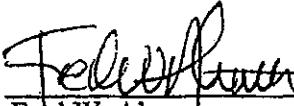
Abercrombie engaged in compliance meetings pursuant to the terms of the Consent Decree.

1 **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-**
2 **ANNUAL PROGRESS REPORTS**

3 Abercrombie submitted Semi-Annual Progress Reports in a timely fashion. The Semi-
4 Annual Progress Reports generally included the materials and information required pursuant to
5 the Consent Decree.

6
7 Dated: September 2, 2008

Fred W. Alvarez

8 By: 
9
10

Fred W. Alvarez

11 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

12 Court-Appointed Monitor

EXHIBIT 9

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7 Court-Appointed Monitor

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDUARDO GONZALEZ, ANTHONY)
OCAMPO, ENCARNACION GUTIERREZ,)
JOHAN MONTOYA, JUANCARLOS GÓMEZ-)
MONTEJANO, JENNIFER LU, AUSTIN CHU,)
IVY NGUYEN, ANGELINE WU, ERIC FIGHT,)
CARLA GRUBB, DAVID CULPEPPER,)
PATRICE DOUGLASS, and ROBAIR)
SHERROD, BRANDY HAWK and ANDRE)
STEELE, on behalf of themselves and all others,)

) CASE NOS.: 03-2817 SI, 04-4730 and
04-4731

EXECUTIVE SUMMARY OF
COURT-APPOINTED MONITOR'S
FOURTH ANNUAL COMPLIANCE
REPORT

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)

Defendants.

ELIZABETH WEST and JENNIFER LU,)

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)

Defendants.

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

v.

ABERCROMBIE & FITCH STORES, INC.,)
A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
and ABERCROMBIE & FITCH)
MANAGEMENT CO.,)

Defendants.

EXECUTIVE SUMMARY OF COURT-
APPOINTED MONITOR'S FOURTH
ANNUAL COMPLIANCE REPORT

1 **I. REQUIREMENTS OF CONSENT DECREE**

2 The Consent Decree provides for the preparation of an Executive Summary of the Court-
3 Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the
4 substance of the Monitor's findings" with respect to Abercrombie's¹ compliance with the
5 requirements of the Consent Decree for the applicable period. The Consent Decree goes on to
6 describe the Executive Summary as follows: "The parties contemplate that the Executive
7 Summary will reflect the Monitor's general findings in areas such as, but not limited to, training,
8 recruitment, . . . and attainment of Benchmarks, all as more specifically covered by the Report,
9 and the parties also contemplate that the Executive Summary will not include specific findings as
10 to, *inter alia*, the numbers of applications, hires, promotions, or specific occurrences or events.
11 By way of example, the Executive Summary's discussion of the Company's training could
12 generally set out the Monitor's findings relative to whether the Company had or had not met its
13 overall training objectives under the Decree over the subject reporting period, and, if not, a
14 general statement of matters with respect to which there had been non-compliance and any steps
15 the Company is to take to resolve such matters." What follows is the Monitor's Executive
16 Summary of the Fourth Annual Compliance Report. This Executive Summary does not discuss
17 any of Abercrombie's obligations limited to the first year following the Approval Date of the
18 Decree.

19 **II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

20 The Consent Decree requires that Abercrombie's marketing materials, taken as a whole,
21 "reflect diversity, as reflected by the major racial/ethnic minority populations of the United
22
23

24 ¹ This Executive Summary incorporates herein by reference the definition of "Abercrombie"
25 contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie &
26 Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc.; and Abercrombie & Fitch
27 Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors,
28 agents, management, successors and assigns and those in active concert or participation with
them, or any of them. The terms of [the Consent] Decree cover all stores operated by
Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other
concept operated by Abercrombie."

1 States.” The Monitor found that Abercrombie’s marketing materials during the Fourth
2 Compliance Period,² taken as a whole, did not reflect diversity.

3 Abercrombie has continued to have a substantial presence of African Americans in the
4 marketing materials at a level generally reflective of African Americans’ respective
5 representation in the United States population. Asian Americans and Latinos were generally
6 underrepresented in Abercrombie’s marketing materials. To achieve compliance with this
7 obligation, Abercrombie should continue to include African Americans at representative levels
8 and strive to include Asian Americans and Latinos in the full range of marketing materials,
9 including in the more prominent in-store locations, so that those materials, taken as a whole,
10 reflect diversity.

11 **III. SUBSTANCE OF MONITOR’S FINDINGS REGARDING NOTICE AND
12 POSTING**

13 The Monitor found that Abercrombie posted the Exhibit B Notices in stores and in its HR
14 411 Bulletin as required by the Consent Decree. As in the Third Compliance period,
15 confirmation of the posting of Exhibit B Notice was provided by the Recruiters. The Consent
16 Decree requires that such confirmation be provided by District Managers. Abercrombie should
17 seek modification of this requirement from Lead Counsel and the EEOC if the Company believes
18 that the objectives of the Consent Decree can be better attained through confirmation by the
19 Recruiters.

20 **IV. SUBSTANCE OF MONITOR’S FINDINGS REGARDING EEO AND DIVERSITY
21 TRAINING**

22 All of Abercrombie’s District Managers, Regional Managers, and Human Resources
23 Employees required to be trained under the Consent Decree received EEO and Diversity
24 Training in the Fourth Compliance Period. However, some of these employees were not trained
25 within the time periods required by the Consent Decree. Notably, a majority of the salaried
26 exempt employees in Abercrombie’s Store Administration, Store Communications, Security,
27 Stores HR, Store Operations, and Store Control departments did not receive the required EEO

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² The Fourth Compliance Period extends from May 1, 2008 to April 30, 2009.

1 and Diversity Training during the Fourth Compliance Period. In addition, a large minority of In-
2 Store Managers received EEO and Diversity Training after the expiration of the applicable
3 deadline set forth the Consent Decree.

4 The Monitor found that Abercrombie does not appear to be accurately tracking
5 individualized training deadlines for employees required to receive EEO and Diversity Training.
6 To be fully compliant with the Consent Decree, Abercrombie would need to ensure that
7 employees are trained within the applicable training deadline. The Monitor remains concerned
8 that Abercrombie's current strategy both fails to meet the training deadline for some and "over
9 trains" others by training them twice as often as required by the Consent Decree. The Monitor
10 encourages Abercrombie to pursue potential low cost and "low tech" alternatives to meeting
11 Decree requirements without overtraining employees.

12 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL
COMPLAINT PROCEDURE**

13 The Monitor found that, in general, Abercrombie complied with the Consent Decree's
14 requirements that it: (1) commence and resolve investigations in a timely manner; (2) interview
15 relevant witnesses; (3) communicate the results of investigations to complainants; and (4) keep
16 written records of the investigatory steps taken. Abercrombie continued to publicize the Internal
17 Complaint Procedure primarily through the Exhibit B Notices and the Associate Handbooks for
18 each brand.

19 In the Fourth Compliance Period, the Monitor alerted Abercrombie to an unusual number
20 of complaints about the manner in which Abercrombie handled internal employee EEO
21 complaints to Human Resources. Abercrombie investigated the issue and provided further
22 training to Human Resources associates handling the complaints. The Monitor will continue to
23 review Abercrombie's implementation and internal oversight of the Internal Compliant
24 Procedure.

25 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND
HIRING**

27 Abercrombie trained its In-Store Managers in the Company's Recruitment and Hiring
28 Protocol within the time period required by the Consent Decree. However, Abercrombie failed

1 to train its District Managers in the Company's Recruitment and Hiring Protocol at all in the
2 Fourth Compliance Period. Therefore, Abercrombie did not train "all involved staff" in within
3 the time periods required by the Consent Decree.

4 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL
PROMOTIONS**

5 Abercrombie met the Promotion Benchmarks (as defined in the Consent Decree) with
6 respect to Asian American, Latino, and female managers for all managerial positions during the
7 7th six-month period. However, Abercrombie did not do so with respect to African American
8 promotions from MIT to the Assistant Manager position or from the Assistant Manager position
9 to the Store Manager/General Manager positions during the 7th six-month period.

10 Abercrombie met the Promotion Benchmarks (as defined in the Consent Decree) with
11 respect to all Minorities for all managerial positions in the 8th six-month period.

12 **VIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITERS**

13 The Monitor found that Abercrombie employed the agreed-upon number of Recruiters in
14 the 7th six-month period and the 8th period. In both periods, Abercrombie based an adequate
15 number of those Recruiters in major metropolitan areas, as required by the Consent Decree.

16 Abercrombie is also charged with implementing a plan to ensure that its Recruiters reflect
17 diversity in race/national origin and gender. More than half of the Company's Recruiters are
18 female. The Monitor also found that the Recruiters are diverse with respect to Asian Americans.
19 The Monitor noted that representation of African Americans within the recruiting department
20 was satisfactory, but noted the absence of African Americans in the more senior positions within
21 the department. The percentage of Latino Recruiters remains low. Abercrombie should
22 redouble its efforts to ensure that the Recruiters hired reflect diversity with respect to Latinos and
23 African Americans at all levels within the recruiting department.

24 The Consent Decree requires that Abercrombie consider both external and internal
25 candidates for the Recruiter position. As in prior compliance periods, the Company did not hire
26 any external candidates for the position. Abercrombie should expand its external recruiting
27 efforts when seeking additional Recruiters and/or filling vacant Recruiter positions.

1 Alternatively, Abercrombie should seek modification of this requirement from Lead Counsel and
2 the EEOC if the Company believes that the objectives of the Recruiter provision are being
3 attained.

4 The Consent Decree requires that Abercrombie charge the Recruiters with recruiting
5 Minority³ applicants of both genders into in-store positions. While Recruiters have increased the
6 number of Minority job fairs and recruiting events attended by Recruiters, the Monitor remains
7 concerned about job responsibilities imposed upon Recruiters that are not Decree-related.
8 Abercrombie should ensure that the Recruiters remain focused on recruiting Minority applicants
9 of both genders into in-store positions and other Decree-related functions.

10 **IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING ADVERTISEMENTS**

11 The Monitor found that Abercrombie complied with the Consent Decree's requirement
12 that the Company place advertisements for in-store employment opportunities in periodicals that
13 targeted African Americans, Asian Americans, and/or Latinos of both genders in the 7th six-
14 month period. However, Abercrombie failed to meet this requirement in the 8th six-month
15 period because its advertisements did not make reference to in-store employment opportunities.

16 **X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MINORITY
17 RECRUITING EVENTS**

18 The Monitor found that Abercrombie attended Minority job fairs and recruiting events as
19 required by the Consent Decree.

20 **XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY
21 CONSULTANT**

22 The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity
23 and inclusion training and to aid in identifying sources of qualified Minority candidates, as
24 required by the Consent Decree.

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28 ³ This Executive Summary incorporates herein by reference the definition of "Minority" contained in the Consent Decree: "'Minority' means all African Americans, Asian Americans, and Latinos."

XII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING BENCHMARKS

The Monitor found that Abercrombie complied with the requirements of the Consent Decree in terms of implementing and establishing Hiring Benchmark rates for the 7th and 8th six-month periods.

Abercrombie did not meet most Hiring Benchmarks set for the Model position for the Fourth Compliance Period. Table 1, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Model position in the 7th and 8th six-month periods.

Table 1

	7th Period	8th Period
African American	Missed	Missed
Asian American	Met	Met
Latino	Missed	Missed
Female	Met	Missed
African American Female	Missed	Missed

Abercrombie did not meet most of the Manager-in-Training Hiring Benchmarks set for the Fourth Compliance Period. Table 2, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Manager-in-Training position in the 7th and 8th six-month periods.

Table 2
MIT - Achievement of 7th and 8th Six-Month Period Benchmarks

	7th Period	8th Period
African American	Missed	Missed
Asian American	Met	Missed
Latino	Missed	Missed
Female	Met	Met

XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING COMPLIANCE MEETINGS

Abercrombie engaged in compliance meetings pursuant to the terms of the Consent Decree.

1 **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-**
2 **ANNUAL PROGRESS REPORTS**

3 Abercrombie submitted Semi-Annual Progress Reports in a timely fashion. The Semi-
4 Annual Progress Reports included the materials and information required pursuant to the
5 Consent Decree.

6 Dated: August 31, 2009

7 Fred W. Alvarez

8 By: 

9 Fred W. Alvarez
10 WILSON SONSINI GOODRICH & ROSATI
11 Professional Corporation

12 Court-Appointed Monitor

EXHIBIT 10

1 Fred W. Alvarez, State Bar No. 068115
2 WILSON SONSINI GOODRICH & ROSATI
3 650 Page Mill Road
4 Palo Alto, CA 94304-1050
5 Telephone: (650) 493-9300
6 Facsimile: (650) 493-6811

7 Court-Appointed Monitor

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 EDUARDO GONZALEZ, ANTHONY) CASE NOS.: 03-2817 SI, 04-4730 and
11 OCAMPO, ENCARNACION GUTIERREZ,) 04-4731
12 JOHAN MONTOYA, JUANCARLOS GÓMEZ-)
13 MONTEJANO, JENNIFER LU, AUSTIN CHU,)
14 IVY NGUYEN, ANGELINE WU, ERIC FIGHT,)
15 CARLA GRUBB, DAVID CULPEPPER,)
16 PATRICE DOUGLASS, and ROBAIR)
17 SHERROD, BRANDY HAWK and ANDRE)
18 STEELE, on behalf of themselves and all others,)
19 Plaintiffs,)
20 v.)
21 ABERCROMBIE & FITCH STORES, INC.,)
22 A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
23 and ABERCROMBIE & FITCH)
24 MANAGEMENT CO.,)
25 Defendants.)
26 ELIZABETH WEST and JENNIFER LU,)
27 Plaintiffs,)
28 v.)
29 ABERCROMBIE & FITCH STORES, INC.,)
30 A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
31 and ABERCROMBIE & FITCH)
32 MANAGEMENT CO.,)
33 Defendants.)
34 EQUAL EMPLOYMENT OPPORTUNITY)
35 COMMISSION,)
36 v.)
37 ABERCROMBIE & FITCH STORES, INC.,)
38 A&F CALIFORNIA, LLC, A&F OHIO, INC.,)
39 and ABERCROMBIE & FITCH)
40 MANAGEMENT CO.,)
41 Defendants.)

42 **EXECUTIVE SUMMARY OF
43 COURT-APPOINTED MONITOR'S
44 FIFTH ANNUAL COMPLIANCE
45 REPORT**

I. REQUIREMENTS OF CONSENT DECREE

The Consent Decree provides for the preparation of an Executive Summary of the Court-Appointed Monitor’s Annual Compliance Report. The Executive Summary should set forth “the substance of the Monitor’s findings” with respect to Abercrombie’s¹ compliance with the requirements of the Consent Decree for the applicable period. The Consent Decree goes on to describe the Executive Summary as follows: “The parties contemplate that the Executive Summary will reflect the Monitor’s general findings in areas such as, but not limited to, training, recruitment, . . . and attainment of Benchmarks, all as more specifically covered by the Report, and the parties also contemplate that the Executive Summary will not include specific findings as to, *inter alia*, the numbers of applications, hires, promotions, or specific occurrences or events. By way of example, the Executive Summary’s discussion of the Company’s training could generally set out the Monitor’s findings relative to whether the Company had or had not met its overall training objectives under the Decree over the subject reporting period, and, if not, a general statement of matters with respect to which there had been non-compliance and any steps the Company is to take to resolve such matters.” What follows is the Monitor’s Executive Summary of the Fifth Annual Compliance Report. This Executive Summary does not discuss any of Abercrombie’s obligations limited to the first year following the Approval Date of the Decree.

II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING

20 The Consent Decree requires that Abercrombie's marketing materials, taken as a whole,
21 "reflect diversity, as reflected by the major racial/ethnic minority populations of the United

²⁴ ¹ This Executive Summary incorporates herein by reference the definition of "Abercrombie" contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie & Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc.; and Abercrombie & Fitch Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors, agents, management, successors and assigns and those in active concert or participation with them, or any of them. The terms of [the Consent] Decree cover all stores operated by Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other concept operated by Abercrombie."

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1 States.” The Monitor found that Abercrombie’s marketing materials during the Fifth
2 Compliance Period,² taken as a whole, did not reflect diversity.

3 All Minorities were underrepresented in Abercrombie’s marketing materials in the Fifth
4 Compliance Period, with the exception of Asian Americans. In past Compliance Periods,
5 Abercrombie’s marketing materials featuring African Americans was steadily increasing. In the
6 Fifth Compliance Period, however, this was not the case, as African Americans were represented
7 at a fraction of their representation in the U.S. population. In addition, Latinos remain almost
8 entirely absent from Abercrombie’s marketing materials, as they have since the inception of the
9 Consent Decree.

10 **III. SUBSTANCE OF MONITOR’S FINDINGS REGARDING NOTICE AND
11 POSTING**

12 The Monitor found that Abercrombie posted the Exhibit B Notices in stores and in its HR
13 411 Bulletin as required by the Consent Decree. The Consent Decree requires that confirmation
14 of the posting of the Exhibit B Notice be provided by District Managers. Abercrombie complied
15 with this requirement in the Fifth Compliance Period.

16 **IV. SUBSTANCE OF MONITOR’S FINDINGS REGARDING EEO AND DIVERSITY
17 TRAINING**

18 The Consent Decree requires that Home Office Associates, Human Resources
19 Employees, District Managers, Regional Managers, and In-Store Managers receive EEO and
20 Diversity Training within specific time periods required by the Consent Decree. Regarding
21 Home Office Employees, approximately 76% of Home Office Associates who had contact with
22 stores received training during the Fifth Compliance Period. Abercrombie reported that the only
23 Human Resource Associate with substantive responsibilities hired during the Fifth Compliance
24 Period was timely trained.

25 Regarding District Managers, Abercrombie satisfied its EEO and Diversity Training
26 obligations for incumbent District Managers. The Company, however, did not timely train
27

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² The Fifth Compliance Period extends from May 1, 2009 to April 30, 2010.

1 newly promoted District Managers. The Consent Decree requires that newly promoted District
2 Managers receive two (2) hours of EEO training and Abercrombie only provided one (1) hour of
3 EEO training to such individuals during the Fifth Compliance Period.

4 Regarding Regional Managers, Abercrombie satisfied its training obligations for
5 incumbent Regional Managers. Although Abercrombie provided documentation that Regional
6 Managers were trained multiple times throughout the year, the Monitor was unable to confirm
7 whether newly promoted Regional Managers were trained in a timely fashion; it is unclear
8 whether the trainings Regional Managers received meet the substantive requirements set forth in
9 the Consent Decree.

10 With respect to In-Store Managers, Abercrombie satisfied its training obligations for
11 incumbent In-Store Managers. However, the Monitor was unable to confirm whether newly
12 promoted In-Store Managers were timely trained because Abercrombie did not provide the
13 Monitor with individualized training deadlines for In-Store Managers regarding EEO and
14 Diversity Training within the Fifth Compliance Period.

15 **V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL
16 COMPLAINT PROCEDURE**

17 The Monitor found that, in general, Abercrombie complied with the Consent Decree's
18 requirements that it: (1) commence and resolve investigations in a timely manner; (2) interview
19 relevant witnesses; (3) communicate the results of investigations to complainants; and (4) keep
20 written records of the investigatory steps taken. Abercrombie continued to publicize the Internal
21 Complaint Procedure primarily through the Exhibit B Notices and the Associate Handbooks for
22 each brand.

23 Throughout the Fifth Compliance Period, complainants continued to call the Monitor to
24 report allegations of discrimination. The Monitor conducted interviews with such complainants
25 and informed Abercrombie of his findings. For the few complaints that described practices
26 potentially inconsistent with the Consent Decree, the Monitor made a particular effort to bring
27 such information to Abercrombie's attention and to follow up regarding Abercrombie's
28 investigation into the complaint. The Monitor was satisfied with Abercrombie's response to

1 these complaints. The Monitor will continue to review Abercrombie's implementation and
2 internal oversight of the Internal Complaint Procedure.

3 **VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND
4 HIRING**

5 The Consent Decree requires that Abercrombie train "all involved staff" in the conduct of
6 structured interviews and the Company's Recruitment and Hiring Protocol. Abercrombie timely
7 trained District Managers and Managers-In-Training. Store Managers and General Managers,
8 however, were not trained in a timely fashion. Abercrombie did not provide any information as
9 to its trainings of Assistant Managers.

10 **VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL
11 PROMOTIONS**

12 Abercrombie satisfied the Promotion Benchmarks (as defined in the Consent Decree) for
13 promotions of Asian Americans and women to the Assistant Manager position during the 9th six-
14 month period. Abercrombie also met the Promotion Benchmarks for promoting Asian
15 Americans, Latinos, and women to the Store Manager and General Manager positions in the 9th
16 six-month period. However, Abercrombie failed to meet the Promotion Benchmarks for
17 promotions of African Americans and Latinos to the Assistant Manager position and for African
18 American promotions to the Store Manager and General Manager positions in the 9th six-month
19 period.

20 Abercrombie satisfied the Promotion Benchmarks for promotions to the Assistant
21 Manager position with respect to all Minorities during the 10th six-month period. It also met the
22 Promotion Benchmarks for promoting African Americans, Latinos, and women to the Store
23 Manager and General Manager positions in the 10th six-month period. However, it failed to
24 meet this Promotion Benchmark for Asian Americans in the 10th six-month period.

25 **VIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITERS**

26 Abercrombie is required to hire and maintain at least twenty-five (25) full-time diversity
27 recruiters. Counting City Recruiters, Senior Recruiters, the Senior Manager for Store Recruiting,
28 the Recruiting Analyst and the Recruiting Coordinator, the Monitor found that Abercrombie

1 employed the requisite number of Recruiters in the 10th six-month period, but not in the 9th six-
2 month period.

3 Pursuant to the Consent Decree, the Recruiters must reflect diversity in race/national
4 origin and gender. Abercrombie satisfied this requirement with respect to gender, as over
5 seventy percent (70%) of the Recruiters employed during the Fifth Compliance Period were
6 female. Abercrombie also satisfied this requirement with respect to Asian Americans within the
7 recruiting department. The Monitor, however, is concerned about the number of Latino and
8 African American Recruiters. Abercrombie has not increased the number of Latino Recruiters
9 since the Third Compliance Period; since that time it has consistently employed two (2) Latino
10 Recruiters. Additionally, the Monitor notes that the representation of African American
11 Recruiters has dropped by more than half since the Second Compliance Period. The Monitor
12 also notes the very low number of Minorities³ in senior and management recruiter positions.

13 The Consent Decree requires that Abercrombie consider both external and internal
14 candidates for the Recruiter position. As in prior compliance periods, all of the Recruiters
15 employed during the 9th and 10th six-month periods were hired internally.

16 The Consent Decree also requires that Abercrombie charge the Recruiters with recruiting
17 Minority applicants of both genders into in-store positions. City Recruiters attended, on average,
18 less than one (1) Minority recruiting event per month in the 9th six-month period and slightly
19 more than one (1) Minority recruiting event per month in the 10th six-month period. Senior
20 Recruiters attended a total of fewer than 10 Minority events with a potential recruiting
21 component during the year. The Monitor noted that a large percentage of the job fairs that
22 Recruiters attended during the Fifth Compliance Period were at schools with a predominantly
23 Caucasian student body. The Monitor encourages Abercrombie to ensure that Recruiters
24 maintain a focus on Decree-related responsibilities, including making recruiting Minority
25 applicants a priority.

26 _____
27 ³ This Executive Summary incorporates herein by reference the definition of "Minority"
28 contained in the Consent Decree: "'Minority' means all African Americans, Asian Americans,
and Latinos."

IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING ADVERTISEMENTS

The Consent Decree requires that Abercrombie place advertisements for in-store employment opportunities in periodicals that target African Americans, Asian Americans, and/or Latinos of both genders. Abercrombie failed to meet this requirement in the 9th and 10th six-month period because its advertisements did not make reference to in-store employment opportunities.

X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MINORITY RECRUITING EVENTS

The Monitor found that Abercrombie attended Minority job fairs and recruiting events as required by the Consent Decree.

XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY CONSULTANT

The Monitor found that Abercrombie continued to utilize a Diversity Consultant throughout the Fifth Compliance Period to conduct diversity and inclusion training and to assist in identifying sources of qualified Minority candidates, as required by the Consent Decree.

XII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING BENCHMARKS

The Monitor found that Abercrombie complied with the requirements of the Consent Decree in terms of implementing and establishing Hiring Benchmark rates for the 9th and 10th six-month periods.

Abercrombie did not meet most Hiring Benchmarks set for the Model position for the Fifth Compliance Period. Table 1, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Model position in the 9th and 10th six-month periods.

Table 1

	9th Period	10th Period
African American	Missed	Missed
Asian American	Met	Met
Latino	Missed	Missed
Female	Met	Met
African American Female	Missed	Missed

1
2 Abercrombie met most of the Manager-in-Training Hiring Benchmarks set for the Fifth
3 Compliance Period. Table 2, below, summarizes Abercrombie's performance with respect to the
4 Benchmarks for the Manager-in-Training position in the 9th and 10th six-month periods.
5

6 **Table 2**
7 **MIT - Achievement of 9th and 10th Six-Month Period Benchmarks**

	9th Period	10th Period
African American	Missed	Met
Asian American	Met	Met
Latino	Missed	Missed
Female	Met	Met

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9
10
11 **XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING COMPLIANCE**
12 **MEETINGS**

13 Abercrombie engaged in compliance meetings pursuant to the terms of the Consent
14 Decree.

15 **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-**
16 **ANNUAL PROGRESS REPORTS**

17 Abercrombie submitted Semi-Annual Progress Reports in a timely fashion. The Semi-
18 Annual Progress Reports included the materials and information required pursuant to the
19 Consent Decree.

20
21 Dated: September 2, 2010

Fred W. Alvarez

22
23 By: 

24 Fred W. Alvarez
25 WILSON SONSINI GOODRICH & ROSATI
26 Professional Corporation

27
28 Court-Appointed Monitor

EXHIBIT 11

From: Knueve, Mark A. [mailto:MAKnueve@vorys.com]
Sent: Tuesday, March 01, 2011 10:58 AM
To: Lee, Bill Lan; Alvarez, Fred; Ridgley, Thomas B.; Norman, Jonathan M.; JLee@MinamiTamaki.com; Sagafi, Jahan C.; GREGORY GOCHANOUR (GREGORY.GOCHANOUR@EEOC.GOV); Julie Wilensky
Cc: Phillips, Lauren (lphillips@wsgr.com)
Subject: RE: FW: April 14, 2011

Fred:

We wanted to respond to Bill's e-mail so that you understood the Company's position.

The parties are currently litigating an enforcement action in front of Special Master Hughes in which the plaintiffs seek an extension of the Decree. The Company believes that the plaintiffs have delayed prosecution of that enforcement proceeding to create an appearance that an extension of the Decree is necessary in order to conclude their prosecution of the enforcement proceeding. The Company also believes that the plaintiffs' suggestions to you regarding meetings and a report after the Decree's expiration are an attempt to obtain through another route what they seek to obtain - over the Company's objections - in the enforcement proceeding. Given that context, the Company objects to the plaintiffs' suggestions to you.

The Company also objects to any extension of the Decree because (1) no extension is warranted in light of the extraordinary progress the Company has made and (2) the Decree has a clear, specifically negotiated six-year term with a definite ending point. All parties ought to be held to their bargain.

Thanks,

Mark

From: Bill Lann Lee [mailto:blee@lewisfeinberg.com]
Sent: Thursday, February 24, 2011 5:53 PM
To: Alvarez, Fred; Knueve, Mark A.; Ridgley, Thomas B.; Norman, Jonathan M.; JLee@MinamiTamaki.com; Sagafi, Jahan C.; GREGORY GOCHANOUR (GREGORY.GOCHANOUR@EEOC.GOV); Julie Wilensky
Cc: Phillips, Lauren (lphillips@wsgr.com)
Subject: FW: FW: April 14, 2011

Fred,

Plaintiffs believe that it is appropriate to have a final Monitor compliance meeting and final court hearing before the Decree expires.

Ideally that should occur after the pending enforcement action is finally decided. Because the Special Master expects to have a ruling by April 11, 2011, we plan to meet and confer with Abercrombie about whether they will stipulate to extend the Decree for the Court to entertain and decide any appeal from the Special Master's ruling, and to hold a final hearing. If the parties agree or the Court extends the Decree pendent lite to permit an appeal to be heard and decided, Plaintiffs propose to schedule the final compliance meeting and final hearing immediately after the appeal decision.

Plaintiffs have no objection to the Monitor preparing a condensed final report for the Court.

Bill

From: Alvarez, Fred [FAlvarez@wsgr.com]
Sent: Friday, February 18, 2011 10:19 AM
To: Knueve, Mark A.; Jonathan M. Norman (jmnorman@vssp.com); TBRidgley@vssp.com; Bill Lann Lee (blee@lewisfeinberg.com); Jack Lee; Sagafi, Jahan C.; gregory.gochanour@eeoc.gov
Cc: Alvarez, Fred; Phillips, Lauren
Subject: April 14, 2011

We are now in the twelfth and final period of the Consent Decree and, in light of the approaching end to the Decree term, I would like to solicit the parties' positions on how to conclude my monitoring duties. The Decree states that "the provisions of this Decree shall remain in effect for a period of six years (72 months)." April 14, 2011 marks the end of the six-year effective period. My question is a simple one: What do the parties expect me to do after April 14, 2011, or leading up to that date? I don't know if this a controversial question or not, but I thought I had better ask.

As you know, in the past, Abercrombie has submitted a Semi-Annual Progress Report at the end of June, which, this year, would extend beyond the term of the Decree. Therefore, we should determine how, if at all, Abercrombie will report on its 12th Period compliance.

In addition, much of my monitoring activities have been performed in the spring and summer such as conducting store visits and drafting the Annual Compliance Reports. The Decree does not address whether the Monitor shall issue a final Report after the term of the Decree to assess Abercrombie's compliance in the 11th and 12th Periods, and so I welcome your views on whether I should prepare a final report. Of course, preparing a report would require a great deal of engagement on Abercrombie's end with document productions, interviews, and data analysis which would, again, extend beyond the period of the Decree.

Finally, we have all participated in compliance meetings each spring, and so I would like to hear your views on whether we should have a final compliance meeting in the next couple of months.

I look forward to your thoughts.

Fred.

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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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